

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF VIRGINIA

Danville Division

THE UNITED STATES OF AMERICA)
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)
)
 v.) Case No.: 4:18CR00012
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)
 MONTEZ LAMAR ALLEN)

**DEFENDANT ALLEN'S SUPPLEMENTAL MOTION TO DISMISS COUNTS
ELEVEN, THIRTEEN AND FIFTEEN OF THE INDICTMENT**

COMES NOW the defendant, Montez Allen, by counsel, pursuant to Rule 12(b)(3) of the Federal Rules of Criminal Procedure and other applicable law, and respectfully moves this Honorable Court to dismiss Counts Eleven, Thirteen and Fifteen of the indictment (ECF 5) on the grounds that follow.

On May 9, 2019 counsel for co-defendant Jalen Terry filed a Supplemental Motion to Dismiss Section 924(c) Counts and a supporting memorandum of law. (Docs. 332 & 333). Defendant Allen now joins Defendant Terry's May 9 Motion and adopts the reasoning and legal argument presented in his counsel's supporting memorandum of law. This motion is meant as a supplement to those already filed and an independent, alternative basis for dismissing at least two of the three Section 924(c) counts pending against Defendant Allen.

The accusations stated in indictment Counts Ten, Twelve and Fourteen all allegedly occurred on the same date, at the same time and at the same location. Based on the arguments presented in the memorandum of law, (Doc. 333), only a single count of

the three existing counts under Section 924(c) can be prosecuted.

Furthermore, Count 12 of the indictment charges Defendant Allen with the attempted murder of Justion Wilson. Count 14 charges Defendant Allen with assault with a deadly weapon also upon Justion Wilson. Again, these two separate counts allegedly occurred on the same date, at the same time and at the same location. Counts Thirteen and Fifteen charge Defendant Allen with the related Section 924(c) counts. Given that these four indictment counts name the same victim and describe the exact same acts, then according to the arguments and caselaw presented in the memorandum of law, (Doc. 333), only one of those two Section 924(c) counts may be prosecuted. They both cannot exist in the same indictment. This argument is not meant to diminish any set out in the prior paragraph but is yet another reason to dismiss one of the three pending Section 924(c) counts.

WHEREFORE, having filed this Motion to supplement his prior Motion to Dismiss the Section 924(c) counts and as an alternative means to dismiss said counts, Defendant Allen asks this Honorable Court to accept his argument and dismiss all but one of the pending Section 924(c) counts in the indictment.

RESPECTFULLY SUBMITTED,

Montez Lamar Allen

By: s/ Neil A. Horn
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion was sent via electronic notification to Ronald Huber, Esq., Managing Assistant United States Attorney, U.S. Attorney's Office, and to Heather Carlton, Esq. Asst. United States Attorney, at 255 West Main Street, Charlottesville, VA on this 17th day of May 2019.

s/ Neil A. Horn